IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No. 3210 of 2007
With
CRIMINAL MISC.APPLICATION No. 3787 of 2007
With
CRIMINAL MISC.APPLICATION No. 3788 of 2007
With
CRIMINAL MISC.APPLICATION No. 3792 of 2007
With
CRIMINAL REVISION APPLICATION No. 218 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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THE STATE OF GUJARAT - Applicant(s)
Versus
AKRAMBHAI @ MANJU INAYAT ARAF - Respondent(s)

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Appearance :
CR.MA Nos. 3210/07, 3787/07, 3788/07, 3792/07

MR AY KOGJE APP for Applicant,
None for Respondent(s) : 1,
CR.RA 218/2007
MR SP MAJMUDAR for Applicants
MR AY KOGJE APP for Respondent : 1,
MR BK RAJ for Respondent :2.
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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 09/05/2007

ORAL JUDGMENT

These Criminal Misc. Applications are filed by the State seeking cancellation of bail granted to the respective respondent in each of the applications by the learned Principal District and Sessions Judge, Surat. Criminal Revision Application has been filed by the original accused so far as bail once granted came to be cancelled by the learned Sessions Judge by the impugned order dated 18th April, 2007.

2. Shortly stated facts leading to these applications are as follows:

2.1. On 25th June, 2006, a criminal complaint came to be lodged before Kosamba Police Station being C.R.No.I-68/2006. In the complaint, it is stated inter alia that son-in-law of the complainant and his friend while going on their motorcycle on National Highway No.8 near Palod village were knocked down by a speeding truck. The incident happened at about

20:30 hrs. on 24th June, 2006. Both the injured persons were shifted to the hospital. The injured however succumbed to the injuries. A case of negligent driving of the truck and causing death was, therefore, lodged. Some three days after the complaint was filed, sister of the deceased-Aiyubbhai made a written complaint to the police authorities stating inter alia that she was following the deceased on another motorcycle and saw that it was not a case of plain accident but that accused persons had deliberately knocked down the motorcycle. In fact she stated in her complaint that the accused had after knocking down the deceased got down from the truck and had beaten them finding that they had not died. She also stated that upon her shouting people had gathered from nearby place.

3. On these accusations, the investigation was carried out regarding the accused having allegedly committed murders.

4. The learned Sessions Judge in separate bail applications filed by the accused was pleased to enlarge them on bail by orders passed in February, 2007. If one peruses the order passed by the learned Judge in Criminal Misc. Application No.136/2007 granting bail to accused Akrambhai (respondent in Criminal Misc. Application No.3210/07) it would appear that the learned Judge was influenced by the fact that initially a complaint was lodged alleging that the death was caused by negligent driving.

Three days thereafter Sections 302, 120B and Section 34 of Indian Penal Code were added. This was at the instance of the sister of deceased Aiyubbhai. She claims to be an eye witness. The learned Judge observed that it is not probable that the sister who is an eye witness would not inform the police authorities for three days. The learned Judge also observed that charge sheet has already been filed and the accused are in custody for quite some time. The learned Judge observed that even the initial complaint was lodged nearly seven hours after the incident and statements were recorded before complaint came to be filed by Julkaben. On this ground the learned Judge was pleased to grant regular bail to the accused persons. These orders of the learned Judge are under challenge at the instance of the State.

5. In Criminal Revision Application No.218/2007 accused Altaf Gulam and Yakub Gulam have challenged an order dated 18th April, 2007 passed by the Learned Additional Sessions Judge cancelling the bail granted to them on the ground that after their release on bail they have misused their liberty and threatened Julkaben and other witnesses.

6. I have heard learned APP Shri Kogje for the State and learned advocate Shri S.P.Majmudar for the applicants in Criminal Revision Application and learned advocate Shri B.K.Raj for the complainant in Criminal Revision Application.

7. In so far as the question of cancelling the bail as prayed for by the State is concerned, I do not find that the learned Sessions Judge committed any error in granting bail to the accused. At this stage when the trial is yet to be conducted, it would not be proper to make elaborate observations on the material on record. However, I am in agreement with the observations made by the learned Judge that the accused deserve to be enlarged on bail. As noted earlier initially a case of accidental death was registered. Nearly three days after the incident, sister of one of the deceased persons stated in writing that she was an eye witness and that not only the accused deliberately ran over the deceased, after they were knocked down, they got down from the truck and gave them further beating to which there were eye witness. The entire trial is yet to be conducted. Suffice to say the learned Judge has given cogent reasons for enlarging the accused on bail.

8. Learned advocate Shri Raj however submitted that the accused persons are headstrong elements and are misusing their liberty. He pointed out that on account of fresh criminal case filed, the learned Additional Sessions Judge was pleased to cancel the bail of some of the accused already granted. He submitted that the learned Judge has given proper reasons for cancellation of bail and this Court should not interfere. He places reliance on the

decision of the Apex Court in the case of Panchanan Mishra v. Digambar Mishra & Ors. reported in 2005 AIR SCW 1103.

9. I find that the complaints and allegations of misuse of liberty are yet to be inquired and the police authorities have to file their report. Taking into consideration the totality of facts and circumstances, I find that in the present case instead of cancellation of bail, condition can be imposed to meet the ends of justice. Not only against the applicants of Criminal Revision Application No.218/2007 but against all accused there may be a possibility of imposing certain conditions upon which only bail can be enjoyed.

10. In the result, while allowing Criminal Revision Application No.218/2007 and setting aside order dated 18.4.2007 passed by the Additional Sessions Judge, it is necessary that any possibility of misuse of liberty should be ruled out. I would have ordinarily imposed the condition that these applicants shall not enter Surat District till completion of the trial. Leaned advocate Shri Raj appearing for the complainant however submitted that the complainants have connections in Valia and Ankleshwar Talukas of Bharuch District also. It is, therefore, directed that these the applicants shall not enter Surat District as well as Valia and Ankleshwar Talukas of District Bharuch till the trial is over except for attending the criminal case. The applicants shall

have one week from today to comply with this condition with an intimation to the concerned police station regarding the new place of residence.

11. It would be open for the State to move the learned Sessions Judge for imposing similar condition if there are allegations of misuse of liberty against the rest of the accused also.

12. With these directions and observations, all applications are disposed of. Criminal Mis. Applications are disposed of accordingly. Criminal Revision Application is allowed. Rule therein is made absolute to the above extent.

Direct service is permitted.

[AKIL KURESHI, J.]

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